

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

Plaintiff,

V.

JOSEPH HERNANDEZ,

Defendant.

REPORT AND RECOMMENDATION

04-CR-6128L

By order dated October 29, 2004, the Honorable David G. Larimer referred the undersigned to "hear and determine" any pretrial matter pending before the court, which a Magistrate Judge may hear and determine pursuant to 28 U.S.C. 636(b)(1)(B) and thereafter to submit to the District Judge proposed finding of fact and recommendations for the disposition by the District Judge. (Docket #10). The defendant filed a motion to suppress evidence derived from illegal electronic surveillance. (Document #370). Motion argument was conducted on May 1, 2007.

For the reasons set forth by the Court in open court on May 1, 2007, it is my Report and Recommendation that the motion to suppress evidence derived from illegal electronic surveillance made by the defendant on March 16, 2007 be **denied**.


HON. MARIAN W. PAYSON
UNITED STATES MAGISTRATE JUDGE

Dated: May 2, 2007
Rochester, New York

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within ten (10) days after receipt of a copy of this Report and Recommendation in accordance with the above statute, Fed.R. Civ.P. 72(b) and Local Rule 72.3(a)(3).

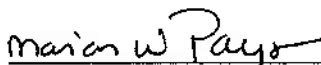
The district court will ordinarily refuse to consider on *de novo* review arguments, case law and/or evidentiary material which could have been, but was not, presented to the magistrate judge in the first instance. See e.g. *Patterson-Leitch Co., Inc. v. Massachusetts Municipal Wholesale Electric Co.*, 840 F.2d 985 (1st Cir. 1988).

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Wesolek v. Canadair Ltd., et al.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 72.3(a)(3) of the Local Rules for the Western District of New York, "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." **Failure to comply with the provisions of Rule 72.3(a)(3), or with the similar provisions of Rule 72.3(a)(2) (concerning objections to a Magistrate Judge's Decision and Order), may result in the District Court's refusal to consider the objection.**

Let the Clerk send a copy of this Order and a copy of the Report and Recommendation to the attorneys for the Plaintiff and the Defendant.

SO ORDERED.



Marian W. Payson
United States Magistrate Judge

Dated: May 2, 2007
Rochester, New York